

## The complaint

Mr and Mrs C's complaint is about their re-mortgage application with The Royal Bank of Scotland Plc (RBS). They believe the application was mishandled and so they couldn't complete before the mortgage offer expired. This meant they ended up with a higher interest rate product than they otherwise would have. They would like compensation that they can use toward the increased interest they have to pay on the mortgage.

## What happened

In the summer of 2021 Mr and Mrs C decided to re-mortgage their home to RBS. They applied online on 6 September 2021. The application was accepted, and an offer issued on 22 September 2021. Attached to the mortgage was a five-year fixed interest rate product of 0.98%. The offer was valid until 22 March 2022.

On 22 September 2021 RBS appointed solicitors ('AC') to complete the necessary work for the re-mortgage to go through and provided it with a copy of the mortgage offer a few days later. AC has confirmed that it received a copy of the property title on the same day. It sent Mr and Mrs C a welcome pack the following day, which included the documents they needed to complete and return – a questionnaire and the standard security form for the property. This asked Mr and Mrs C about their existing borrowing, as AC had noticed there were two charges on the property title.

Mr and Mrs C completed the questionnaire and returned it along with the standard security, which AC received on 1 November 2021. AC has confirmed the standard security was not signed, and so it sent them another copy for completion, but not until May 2022. In relation to their borrowing, Mr and Mrs C gave details about their main mortgage and said the question about other loans secured on the property was 'N/A'. It is not clear when these documents were returned, but it appears from the dates included in it, it was on or after 26 October 2021.

On 5 November 2021, AC called Mr C to question the second charge on the property, as they hadn't given details in the questionnaire. Mr C confirmed this was a help-to-buy (HTB) loan. It asked him if this would be being paid off from the re-mortgage funds and he confirmed that it would not; it was to be left in place. He was told that a ranking agreement would be needed and so the application needed to be transferred to another team. Although AC has been able to provide a recording of the beginning of this call, it stops before Mr C speaks to the second team member. Mr C has told us AC said it would make a call to the HTB lender and so they had assumed it was being dealt with.

On 27 November 2021 AC wrote to Mr and Mrs C explaining that additional work was needed as there were two securities on the property. As it was a condition of the mortgage that RBS had the first charge on the property, the HTB lender needed to agree to a ranking agreement. AC told Mr and Mrs C that if they didn't want to appoint their own solicitors to complete this work, it would do it for £150.

On 7 December 2021 AC emailed Mr and Mrs C, asking them to contact the HTB lender. A copy of the letter of 27 November 2021 was enclosed. Mr and Mrs C emailed AC the

following day saying that Mr C had been told AC was going to contact the HTB lender and they had assumed the issue was being dealt with. He asked why it had taken a month to inform them about the requirement for a ranking agreement. A response was chased on 13 December 2021. Mr C called AC a week later and it explained that the HTB lender required the process to be initiated by the borrowers. It appears at this point Mr and Mrs C confirmed that they wanted AC to act on their behalf in relation to the ranking agreement.

Mr C called the HTB lender. From 21 December 2021, the HTB lender/its solicitors interacted with AC about the ranking agreement. There was an initial error in the draft agreement AC produced, so RBS declined to sign it until it was corrected. It took RBS 12 days to tell AC this.

On 22 March 2022 Mr and Mrs C's mortgage offer expired.

The ranking agreement, signed by all three parties, was received by AC on 21 April 2022.

On 5 May 2021 AC informed Mr and Mrs C the mortgage offer had expired and they would need to ask for an extension. In addition, it informed them that the standard security they had previously returned was not signed. It sent them a further copy of the document for completion. Mr and Mrs C returned the original standard security, signed, four weeks later.

Mr and Mrs C asked RBS to extend the mortgage offer because of the problems they'd experienced with AC. They asked to do so on 10 May 2022; RBS decline the request, but didn't do so until 14 June 2022. This decision was passed on to Mr and Mrs C by AC on 17 June 2022.

Mr and Mrs C complained to RBS in June 2022, at which point it forwarded their concerns to AC for response. AC provided an initial response in August 2022. It provided some information about what had happened and declined the complaint. It said that the reason the mortgage had been unable to complete was because of the ranking agreement, and indicated it considered it was Mr and Mrs C's fault that process was not completed in time as they had not contacted the HTB lender regarding their intentions about the HTB loan, as they should have.

Subsequently, RBS responded further to Mr and Mrs C's concerns about request for the mortgage offer to be extended. This was in a letter dated 13 October 2022. It didn't comment on the actions of AC and referred Mr and Mrs C to the £300 the solicitors had sent them (which it had not at that point). RBS did, however, acknowledge that the service it had provided was lacking regarding their request to have the mortgage offer extended. It offered to add £250 to the compensation the solicitors had offered (although this offer had not yet been made). RBS declined to reinstate the mortgage offer of September 2021.

The solicitors wrote to Mr and Mrs C again on 24 October 2022 and paid them £300 for the upset and inconvenience its poor service and lack of communication had caused. It made no comment on the extent or impact on the application of the poor service it provided.

Mr and Mrs C weren't satisfied with the responses they received and asked us to consider their complaint. One of our Investigators did so, and he concluded that AC could have been more proactive in its handling of the application. He ultimately recommended RBS increase the compensation payment by £150.

In response Mr and Mrs C confirmed they had arranged a new mortgage product with their existing lender of 4.77%, over the remaining term of the original mortgage, which was a year longer than that applied for with RBS. This was because it would cause them less stress than applying to re-mortgage elsewhere, given their experience with RBS. As such,

Mr and Mrs C confirmed that they wanted to be monetarily compensated for RBS's solicitors' mistakes.

Mr and Mrs C also questioned why they hadn't been asked if there were other charges on their mortgage at application stage, which they think would have highlighted the additional work that would be needed. They also questioned why the solicitors had not been familiar with HTB arrangements, given how many such arrangements existed. Mr and Mrs C asked that the complaint be passed to an Ombudsman for review.

RBS agreed with the Investigator's conclusions and the additional compensation he recommended.

I issued a provisional decision on 24 January 2024, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

*'All main mortgage lenders require as a condition of the mortgage to have the first charge on a property. However, where there is an existing second charge loan, when the existing mortgage is repaid, that charge moves from second to first place. This means that for a new mortgage to be agreed, the original second charge lender needs to agree to continue to have the second charge on the property, and the new lender to have the first.*

*It is a borrower's responsibility to ensure that the property title is in a fit state for a lender's security to be attached to it. As such, it is the borrower's responsibility to have the arrangements for the ranking of the securities to be changed. In this case, while there was only one firm of solicitors involved, that firm were working for RBS in relation to the majority of the work done, but for Mr and Mrs C in relation to arranging the ranking agreement. This means that RBS is responsible for any delays caused by AC in relation to the things it was doing for RBS, but that it is not responsible for any delays caused when AC was sorting out the ranking agreement. Mr and Mrs C were told about the need for a ranking agreement in AC's letter of 27 November 2021, and this process was concluded on 21 April 2022. The only error I can see on RBS' part during this period is that it took longer than would seem reasonable to tell AC the first draft of the ranking agreement was wrong – around a week of delay.*

*However, RBS is responsible for any delays caused before and after that date. I have given a brief chronology of some key points in the timeline from the time of the offer to 27 November 2021. I can only conclude there were significant delays in relation to the standard security. Mr and Mrs C returned the standard security at the beginning of November 2021, but it had not been completed properly. AC confirmed that the information Mr and Mrs C had provided was being checked and that had elicited the 5 November 2021 telephone call, and yet AC didn't raise this issue until six months later. Had it done so at the time it raised the ranking agreement, based on the time it took Mr and Mrs C to respond when they were told, I am satisfied that a signed copy would have been provided before the end of 2021. As such, as soon as the ranking agreement was completed, it should have been possible for the mortgage application to move ahead.*

*While Mr and Mrs C were told that a ranking agreement would be needed on 5 November 2021, it doesn't appear they were told what this really meant and that they were responsible for arranging this to be done. This was confirmed in a letter sent to them three weeks later. I consider that reasonably, given the mortgage could not move ahead without the ranking agreement and AC was aware Mr and Mrs C didn't have their own legal advice, this letter should have been sent earlier. On 5 November 2021 Mr and Mrs C's case had to be transferred to a different team because the omission about the HTB loan had been identified. This would have required the new team to fully review the file, but that should not have taken more than a week. As such, I consider AC caused two weeks of delay for which RBS is*

responsible.

*The completed ranking agreement was received four weeks and two days after the mortgage offer expired. As I have set out above, I have identified around three weeks of delays for which RBS is responsible. As such, it does not seem likely that even had those delays not happened, the mortgage could have completed before the offer expired.*

*In relation to the mortgage offer expiring, it would usually be for the parties assisting a borrower, such as their broker or solicitors, that would monitor this and deal with any extension requests needed. In this case, as Mr and Mrs C had applied directly, there were no such parties involved and it was for them to monitor it themselves. I can understand their unhappiness that the request for the mortgage offer to be extended was declined by RBS. As the mortgage offer had already expired before the request was made, there was nothing to be extended and I don't consider RBS' decision was unreasonable.*

*RBS has offered £250 for any upset or inconvenience the delay in it providing an answer may have caused. I think this is a reasonable amount for that lapse in service. AC also paid Mr and Mrs C £300 for the poor service it provided. It did not state this was in relation to the services it provided on behalf of RBS, but as RBS 'added' compensation to that amount, it would appear RBS considers the compensation was paid for the work done on its behalf. RBS also agreed to pay the additional £150 compensation recommended by the Investigator. That is a total of £700. In the circumstances, given the limited delays RBS is responsible for, I consider that amount to be reasonable and proportionate.'*

RBS didn't accept my provisional decision and withdrew its agreement to pay additional compensation to Mr and Mrs C. It said that both it and AC had offered redress and it felt that awarding more was unfair. It highlighted that a borrower needed to make sure the security offered was suitable, and Mr and Mrs C played a significant part in the delays, for example in not signing and returning paperwork when requested.

Mr and Mrs C also didn't accept my provisional decision. They said when they returned the standard security to AC it was signed and witnessed, and when they had checked with AC that it had been received, it had been unable to find the document. Mr and Mrs C also said they had not instructed AC to act on their behalf in relation to the ranking agreement. They also asked some questions about the process and timings for the ranking agreement, as they were not aware this was not concluded until 21 April 2022.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I note that Mr and Mrs C have said they did not instruct AC to complete the work on the ranking agreement on their behalf. I can't comment on that issue, as any work AC completed in that capacity would not fall within my remit. If Mr and Mrs C believe AC completed works on their behalf without their permission, they would have to raise that issue directly with AC. However, it remains the case that this work was being completed on Mr and Mrs C's behalf and so any delays caused during this process cannot be laid at NatWest's door.

As for the matter of the standard security, I have noted what has been said. There is no clear evidence that would support either Mr and Mrs C or NatWest's submissions on this point. However, as I explained in my provisional decision, the delay in this issue being dealt with was not key to the mortgage not completing on time. This is because even if that issue had been dealt with when it was first noticed, and none of the delays RBS was responsible for had happened, the time taken for the ranking agreement to be arranged meant the mortgage

couldn't have completed before the mortgage offer expired.

Mr and Mrs C have asked about the ranking agreement process and timings. The ranking agreement needed to be signed by NatWest, the HTB lender and Mr and Mrs C. As I have said above, NatWest signed the document on 9 March 2021 and returned it to AC. It was then sent to Mr and Mrs C on 14 March 2022 and received back from them on 6 April 2022. AC sent the agreement to the HTB lender the same day and it was received back on 21 April 2022. I hope this provides the clarification Mr and Mrs C want.

NatWest has said it thinks the amount of compensation I have awarded is unfair. This is because Mr and Mrs C caused delays in the process themselves. I can confirm that I was fully aware of the timescales for Mr and Mrs C to return documentation when I reviewed the complaint before reaching my provisional decision. I also took into account that any delays that were caused by AC when the ranking agreement was dealt with were not NatWest's responsibility.

I have reviewed my conclusions, along with all the new and existing evidence, but I have not been persuaded to change them. I remain satisfied that further compensation is appropriate in the circumstances.

### **My final decision**

My final decision is that I uphold this complaint in part. I order The Royal Bank of Scotland Plc to pay Mr and Mrs C £400, inclusive of the amount it offered in its final response letter.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs C to accept or reject my decision before 8 March 2024.

Derry Baxter  
**Ombudsman**